IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL N0.1347 OF 2003

1. Sitaram Dada Lakade,
   Age about 33 years,
   Residing at Building No.131/4373,
   Nehru Nagar, Kurla (East),
   Mumbai-400 024
   and at present undergoing
   the sentence imposed upon
   him at Yerwada Central Prison,
   Yerwada.

2. Smt.Tarubai Dada Lakade,
   Age about 63 years,
   Residing at Building No.131/4373,
   Nehru Nagar, Kurla (East),
   Mumbai - 400 024
   and at present on bail. ..APPELLANTS.
   (Orig.Accused Nos.1&2)

Versus

The State of Maharashtra,
(at the instance of the Senior
Inspector of Police, Trombay
Police Station, Vide their
FIR No.63 of 1998.) ..RESPONDENT.

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Mr.Nitin Sejpal, Adv. with Ms.Pooja Bhojne, Adv. for the Appellants.
Mrs.A.S.Pai, APP, for the State.

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CORAM : R.M.S.KHANDEPARKAR, & SMT.V.K.TAHILRAMANI, JJ.

DATED : OCTOBER 15, 2007.

DATE OF RESERVING THE ORDER : 20th September,2007.

DATE OF PRONOUNCING THE ORDER: 15th October, 2007.

JUDGMENT (PER SMT.V.K.TAHILRAMANI, J.) :

1. Through this Appeal the Appellants-orig.accused Nos.1 & 2 have challenged the judgment and order dated 9.10.2003 passed by the learned Additional Sessions Judge, Greater Bombay in Sessions Case No.844 of 1998. By the said judgment and order the learned Sessions Judge convicted appellant No.1 Sitaram Dada Lakade under Sections 302, 498-A and 201 of IPC. Appellant No.2 Smt.Tarubai Dada Lakade was only convicted for the offence under Section 498-A of IPC.

2. The prosecution story briefly stated is as under :-

. Kavita (deceased) was marred to appellant No.1 on 28.5.1996. Thereafter Kavita started residing with both the appellants. Appellant No.2 is the mother of appellant No.1. It is the case of the prosecution that both the appellants were harassing Kavita for bringing gold ornaments and other articles from her parents. As the demand

was not fulfilled in the year, 1997 Kavita was thrown out of the matrimonial home by both the appellants. She came to reside with her parents. It was found that Kavita was unwell. Hence parents of Kavita take her to Doctor for treatment. Doctor diagnosed her disease to be Tuberculosis. They informed appellant No.1 about this fact whereupon appellant No.1 told them that he was not ready to take her back due to her disease. PW-3 Pundlik Arjun who is the uncle of Kavita told appellant No.1 that they would treat the disease and appellant No.1 should thereafter take Kavita back. Around November, 1997 Kavita recovered from Tuberculosis. At that time appellant No.1 told that he was not ready to take Kavita back. However thereafter appellant No.1 changed his mind and he took Kavita back. Hence in March, 1998 Kavita went back to the house of the appellants. On 14.5.1998 appellant No.1 took Kavita to PW-13 Dr. Aziz Mhate for treatment. The said Doctor was at Vashi, Navi Mumbai. After Kavita was seen by the Doctor, both appellant No.1 and Kavita were returning home by train. The appellant travelled in the gents compartment and

Kavita travelled in the ladies compartment. The appellant alighted at Kurla. He did not find Kavita, hence he informed the station master and an announcement came to be made at the railway station. Thereafter in the morning of 15.5.1998 at about 9:00 a.m. dead body of Kavita was found lying on the slope of the railway-track between Mankhurd and Vashi. PW-20 PI Malche then attached to Trombay Police Station was informed about this fact. Hence he proceeded to the spot. Incise wound was seen on the neck of the dead body. So also other injuries were noticed. Message was sent to various police stations in respect of finding of a dead body of a female. PW-1 PSI Dhandore of Trombay Police Station then lodged his FIR in respect of murder of Kavita. Thereafter investigation commenced.

3. In the meanwhile on 15.5.1998 PW-3 Pundlik who is the uncle of Kavita got telephone call from appellant No.1 at about 3:00 p.m. that on 14.5.1998 when appellant No.1 and Kavita had gone to Doctor for treatment and they were returning back by train, Kavita was found missing from

ladies compartment. Thereafter PW-3 Pundlik Arjun went to the house of the appellants then they lodged a missing report at Kurla Railway Police Station. In the meanwhile as Trombay police station has already registered a murder-case and message had been flashed about finding of a dead body, PW-3 Pundlik Arjun was told about finding of a dead body by Trombay Police Station, hence he met PW-20 PI Malche who took him to Rajawadi Hospital to identify the dead body. PW-3 Pundlik identified the body to be that of Kavita. After completion of investigation the charge-sheet came to be filed. In due course the case was committed to the Court of Session.

4. Charge came to be framed against both the appellant-accused under Section 498-A and in addition thereto charge came to be framed against appellant No.1 under Sections 302 & 201 of IPC. Both the appellants pleaded not guilty to the said charge and claimed to be tried. The defence of appellant No.2 is that of total denial and false implication. The defence of appellant No.1 is that on 14.5.1998 in the evening he had taken

Kavita to PW-13 Dr. Aziz Mhate at Vashi for treatment. Thereafter Kavita and he were returning back home by train. Kavita went in the ladies compartment and the appellant was travelling in the gents compartment. However, when the appellant No.1 got down at Kurla railway station he did not find his wife Kavita. As he did not find his wife Kavita, he went home to check but he did not find her at home. Hence he came back to the railway station and met PW-7 Shaikh Ismail, the station-master of Kurla railway station and informed him that his wife was missing. Due to this, announcement came to made at railway station. The said announcement was made by PW-8 Milind Hivale, Central Announcer, Central Railway, CST that one lady was missing and her husband was sitting in the office of Kurla railway station. Thus, it is the case of appellant No.1 that after his wife boarded the ladies compartment of the train at Vashi he does not know what happened to her thereafter. In short the defence of appellant No.1 is that of false implication due to suspicion. After going through the evidence adduced by the prosecution,

the learned Sessions Judge convicted and sentenced the appellants, as stated in Para-1 above. Hence this Appeal.

5. We have heard Mr.Nitin Sejpal, the learned Advocate for the appellants and Mrs.A.S.Pai, the learned APP for the State. We have also perused the judgment and order passed by the learned Sessions Judge as well as the records pertaining to the present case.

6. So far as the involvement of appellant No.1 in the incident of murder is concerned, we may state that there is no direct evidence against him and the case is totally based on circumstantial evidence. The circumstantial evidence is :-

(1) recovery of blood stained knife (Article 22) at the instance of appellant No.1;

(2) recovery of two Mangalsutras (Articles 24 & 26) belonging to Kavita at the instance of appellant No.1;

(3) recovery of Article 20 & 21 i.e. blood stained clothes of the appellant at the instance of appellant No.1;

(4) Foot print of appellant No.1 at the spot where the dead body found;

(5) Purchase of rope by appellant No.1;

(6) Last seen;

(7) Conduct of appellant No.1.

7. We shall now proceed to deal with each of the circumstances :

. As far as recovery of knife is concerned the panch witness PW-9 Abdul Baig has deposed about the recovery of knife (Article 22) at the instance of appellant No.1. This witness has stated that on 16.5.1998 at about 1:30 p.m. he was called to Trombay Police Station. Appellant No.1 made a statement that he will produce knife

and the Mangalsutras. The panchnama relating to said recovery is at Exh.32 & Exh.33. The knife in question Article-22 is a stainless steel knife having total length of 9 inches i.e. having blade of 5 inches and a handle of 4 inches. "Vipul Steel" was written on the blade of the said knife. Mr.Sejpal, however, has drawn our attention to Exh.59 which was part of the charge-sheet which was furnished to the accused. This document has been exhibited through the Investigating Officer PW-20 PI Malche. This document shows that on 15.5.1998 a knife having "Vipul Steel" written on the blade was seized. The size of the knife mentioned in Exh.59 is the same as Article 22. In Exh.59 the knife which was seized by the police was shown as seized in C.R. No.63 of 1998. The said document Exh.59 is dated 15.5.1998 and it is signed by the Investigating Officer PI Malche. Thus, this clearly shows that in the very same C.R. the very knife, which is shown as recovered at the instance of appellant No.1 on 16.5.1998, was infact seized by the police in the very same case on 15.5.1998. The existence of the document (Exh.59) dated 15.5.1998 clearly renders the

recovery of knife article (Exh.22) at the instance of appellant No.1 suspicious. The Investigating Officer has categorically admitted that such a document was indeed prepared on 15.5.1998. He has offered no explanation in respect of the same. In this view of the matter, we find that no reliance can be placed on the aspect of recovery of knife (Article 22) at the instance of appellant No.1. It is pertinent to note that the very same panchnama is not only about recovery of knife at the instance of appellant No.1, but, also in respect of recovery of Mangalsutras at the instance of appellant No.1. Looking to the aspects discussed above, we are not inclined to place any reliance on the evidence of the panch witness and the panchnama in respect of recovery of knife and Mangalsutras at the instance of appellant No.1. However we may also state that as far as Mangalsutras are concerned the panch witness PW-19 Mr.D'Souza, who was a panch to the inquest panchnama of the dead body of Kavita, has deposed that infact when the inquest panchnama was drawn the Mangalsutras were on the dead body. This is an additional aspect why we are not

inclined to place any reliance on the recovery of Mangalsutras at the instance of appellant No.1.

8. As far as recovery of clothes (Articles 20 & 21) at the instance of appellant No.1 is concerned, the clothes of appellant No.1 have been shown as recovered at his instance from his house. The recovery of clothes at the instance of appellant No.1 has taken place on 18.5.1998. According to the panch witness the accused has stated that he would take them to his house and produce the incriminating articles such as clothes. Accordingly the accused led the police and panchas to his house and produced the clothes from the cupboard which was in his house. However, it is seen that appellant No.1 was arrested on 16.5.1998 from his house. The accused was sitting in his house at that time. On the date when the accused came to be arrested, search was taken of his house. At that time the wooden and stainless-steel cupboard in the house of the accused was also searched and nothing incriminating was found therein on 16.5.1998. This admission has been given by the Investigating

Officer PW-20 PI Malche in his cross-examination. Thus, the Investigating Officer has admitted that the house of the appellants was searched on 16.5.1998 and nothing incriminating was found in the search of the house as well as of the cupboards in the house. The I.O. has categorically stated that they had searched the cupboards in the house of the accused, however, nothing incriminating was found. However, from the very same cupboard on 18.5.1998 recovery of clothes is shown at the instance of appellant No.1. Looking to the evidence of the Investigating Officer we find that we cannot place any reliance on the circumstance of recovery of clothes at the instance of appellant No.1.

9. The next circumstance against appellant No.1 is that the footprint of the appellant was found at the scene of the offence. Panchanama (Exh.51) was drawn on 18.5.1998 in respect of finding of footprint of appellant No.1 at the scene of the offence. It is pertinent to note that on 15.5.1998 when the police learnt about a dead body near the railway track and they reached

the spot, panchnama of the spot came to be drawn. There is no mention of finding of any footprint in the said panchnama. Infact, PW-1 PSI Dhandore has specifically stated that no footprints were seen on the spot on 15.5.1998. He has categorically stated that from the spot they did not find any footprint within the area of 50 meters. Admittedly appellant No.1 was taken to the spot later on. Hence Mr.Sejpal has contended that when appellant No.1 was taken to the spot later on, as is seen from the evidence, the footprint must have occurred at that point of time or it was taken by the police at that point of time. He submitted that from the evidence of PW-1 PSI Dhandore it is clear that no footprints were seen on 15.5.1998. Thus, the circumstance of finding of footprint of appellant No.1 at the scene of crime is a circumstance which has been concocted by the prosecution. Looking to the evidence on record, we find much merit in the submission made by Mr.Sejpal.

10. One other circumstance against the appellant is rope (Article-16), which was found

near the dead body, had been purchased by appellant No.1. Shopkeeper PW-10 Dinesh has been examined by the prosecution to show that appellant No.1 had purchased a nylon rope from his shop. However as far as this witness is concerned he has stated that he cannot say for sure that Article-16 is the same rope that he had sold to the accused. Infact this witness has also stated that he cannot say for sure that appellant No.1 is the same person who had come to his shop to purchase a rope. Thus, this circumstance of purchase of rope at the instance of appellant No.1 also falls to the ground.

11. As far as the circumstance of "last seen" is concerned, appellant No.1 has admitted that on 14.5.1998 in the evening he had taken Kavita to PW-13 Dr. Aziz Mhate at Vashi for treatment. Thereafter Kavita and he were returning back home by train. Kavita went in the ladies compartment and appellant No.1 was travelling in the gents compartment. However, when appellant No.1 got down at Kurla railway station. He did not find his wife Kavita. As he did not find his wife

Kavita, he went home to see if she had reached home, but, he did not find her at home. Hence he came back to Kurla railway station and met PW-7 Shaikh Ismail, the station-master of Kurla railway station and informed him that his wife was missing. Due to this, announcement came to made at railway station. The said announcement was made by PW-8 Milind Hivale, Central Announcer, Central Railway, CST that one lady was missing and her husband was sitting in the office of Kurla railway station. Thus, it is the case of appellant No.1 that after his wife boarded the ladies compartment of the train at Vashi he does not know what has happened thereafter. Looking to the evidence on record and especially admission by appellant No.1, we find that there is one circumstance against appellant No.1 i.e. of last seen. We shall deal with this circumstance a little later.

12. The last circumstance which is sought to be used against appellant No.1 is his conduct. As far as the conduct of appellant No.1 is concerned, the learned APP has relied on the evidence of PW-3

Pundlik Arjun who is the uncle of the deceased. PW-3 Pundlik Arjun has stated that on 15.5.1998 at about 3:00 p.m. the appellant telephoned him and informed him that on 14.5.1998 appellant No.1 and Kavita had gone to Doctor for treatment and that Kavita was found missing from the ladies compartment. On receiving the telephone call Pundlik went to the house of the appellants at about 3:30 p.m.. He made inquiry with appellant No.1 whether appellant No.1 had lodged a missing report. Appellant No.1 had not lodged missing-report, hence PW-3 Pundlik took appellant No.1 to Kurla railway police station to lodge missing report. Pundlik has stated that while lodging the missing report, appellant no.1 was stammering. This conduct on the part of appellant No.1 has been relied upon by the prosecution to show his complicity in the crime. As far as the aspect of lodging a missing report is concerned, it is seen that when appellant No.1 got down at Kurla railway station from the train he did not see his wife. Hence he searched for her. Thereafter he approached PW-7 Shaikh Ismail the station master of Kurla railway station and

informed him about this fact. Thereafter an announcement came to be made at the Kurla railway station and other railway stations. PW-7 Shaikh Ismail and PW-8 Nitin Hivale have deposed regarding this aspect. Thus, it is seen that some effort has been made by appellant No.1 to search for his wife.

13. As far as appellant No.1 Sitaram Dada Lakade is concerned, he has been convicted under Sections 302, 201, 498-A of IPC. As far as the case against him under Section 302 of IPC is concerned, we find only two circumstances against him. The first being "last seen" and the second being "conduct" of appellant No.1. Accepting that appellant No.1 was in the company of his wife Kavita in the night of 14.5.1998 which fact is admitted by appellant No.1, in the present case looking to the evidence on record we do not find that this circumstance of "last seen" along with "conduct" of the appellant is such as to form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by appellant No.1 and none else. It has been consistently laid down by the

Apex Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. In the case of **Manjunath Chennabasapa Madalli Vs. State of Karnataka** reported in **(2007) 3 Supreme Court Cases (Cri) 101**, it has been observed as under :-

> The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. Where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

14. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In **Padala Veera Reddy Vs. State of A.P.** reported in **1989 Supp (2) SCC 706 : AIR 1990 SC 79**, it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests :

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

. In the cases which rest solely on circumstantial evidence, great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established

must be consistent only with the hypothesis of guilt. It may be that in a situation of this nature where the court legitimately may raise a strong suspicion that in all probability the accused was guilty of commission of the offence but applying the well-settled principle of law, that suspicion, however, grave may be, cannot be a substitute for proof, the same would lead to the only conclusion herein that the prosecution has not been able to prove its case beyond all reasonable doubt. In the present case looking to the evidence on record, we find that only a strong suspicion is raised that in all probability appellant No.1 committed the crime. Yet suspicion however grave it may be, cannot take place of legal proof. A moral conviction however strong or genuine cannot amount to a legal conviction supportable in law. Thus, as far as the conviction of appellant No.1 under Section 302 of IPC is concerned, we are of the opinion that appellant No.1 deserves to be given the benefit of doubt.

15. In the present case, both the appellants

have also been convicted under Section 498-A of IPC. The prosecution in order to prove its case under Section 498-A IPC has examined PW-3 Pundlik Arjun, who is the uncle of deceased Kavita and PW-4 Rukmini Bandgar who is the mother of deceased Kavita.

16. PW-3 Pundlik Arjun has stated that Kavita was married to appellant No.1 in May, 1996. In about September, 1996 PW-4 Rukmini i.e. mother of Kavita and sister of this witness started telling Pundlik that both the appellants were harassing Kavita for bringing gold ornaments and other articles from her parents. He has further stated that in the year, 1997 Kavita was thrown out of the matrimonial home by both the accused. Kavita came to reside with her parents. This witness met Kavita during his visit to his sister Rukmini's house. When Pundlik met Kavita she told him that her husband and mother-in-law had thrown her out of the house as their demand for gold ornaments and other articles was not fulfilled. Pundlik stated that they found that Kavita was suffering from Tuberculosis. Pundlik and his sister Rukmini

told the appellants that they would look after the expenses of medical treatment of Kavita and that the appellant should take her back to the house. However, appellant No.1 declined to take her back with them due to the fact that Kavita was suffering from Tuberculosis. Towards the end of 1997 appellant No.1 informed Pundlik that they wanted to proceed for divorce. Thereafter Pundlik along with some other persons went to the house of the accused and they requested the appellants to accept Kavita, however, they declined. Yet Pundlik left Kavita at her matrimonial house and came back. On the next day, appellant No.1 telephoned Pundlik and told him to take Kavita back. Pundlik then brought Kavita back. Thereafter appellant No.1 telephoned and informed them that they were willing to forget whatever had happened and were ready to take Kavita back. Thereafter he took Kavita back with him.

17. PW-4 Rukmini Bandgar who is the mother of Kavita has stated that her daughter Kavita was married to appellant No.1 in May, 1996. Soon after the marriage appellant no.1 Sitaram Lakade

and appellant No.2 Tarubai Lakade started giving trouble to Kavita. The reason for the harassment is that they were telling Kavita to bring gold ornaments and other articles from her parents. Kavita used to tell her and other witnesses about this harassment whenever she met them. Kavita also informed this witness that the appellants were abusing her orally as well as physically. In March, 1997 when kavita came to the house of PW-4 Rukmini, at that time Kavita had temperature and she had become very weak. Kavita informed Rukmini that appellant No.1 and her mother-in-law were making her to work even though she had no energy due to physical weakness, and if Kavita did not work they were abusing her. Thereafter both the appellants threw Kavita out of the house. Thereafter when Kavita came to the house of this witness they found that she was suffering from Tuberculosis. They informed appellant No.1 about this fact whereupon appellant No.1 told them that he was not ready to take her back due to her disease. PW-3 Pundlik who is the uncle of Kavita told appellant No.1 that they would treat the disease and the appellants should not throw Kavita

out. Around November, 1997 Kavita recovered from Tuberculosis. At that time appellant No.1 told that he was not ready to take Kavita back. However thereafter appellant No.1 changed his mind and he took Kavita back. Hence in March, 1998 Kavita went back to the house of the appellants. After Kavita returned back to her matrimonial house Kavita telephoned PW-4 Rukmini from a neighbour's house and informed her that there was further demand for gold ornaments and other articles from the accused. Thereafter this witness was informed on 15.5.1998 that dead body of Kavita was found. Looking to the evidence on record of both PW-3 Pundlik and PW-4 Rukmini we find that the prosecution has proved its case as far as Section 498-A of IPC is concerned against both the appellants.

18. Mr.Sejpal submitted that whatever was told by Kavita to her mother PW-4 Rukmini as well as to her uncle PW-3 Pundlik Arjun cannot be relied upon, as it would be termed as "dying declaration". In support of his contention, he placed reliance on the decision in the case of

Gananath Pattnaik Vs. State of Orissa reported in **2002 Supreme Court Cases (Cri) 461**. We have perused the said decision. In the said case certain statements made by the deceased were taken on record with the aid of Section 32 of the Indian Evidence Act as it related to the cause of death of the deceased and the circumstance of transaction which resulted in her death. The Supreme Court held that such a statement is not admissible in evidence for the offence punishable under Section 498-A of IPC. In the present case the statement by deceased Kavita in relation to offence under Section 498-A IPC has not been taken on record with the aid of Section 32 of Indian Evidence Act. In such case, the decision in the case of **Gananath Pattnaik** (supra) can have no applicability to the facts of the present case.

19. Looking to the evidence of PW-3 Pundlik and PW-4 Rukmini we are of the opinion that the prosecution has fully proved its case under Section 498-A of IPC in respect of both the appellants. Hence in our view the conviction of the appellants under Section 498-A of IPC deserves

to be maintained. As far as the conviction of appellant No.1-Sitaram Dada Lakade under Section 201 of IPC is concerned we find no material to support the same.

20. In the result, the conviction and sentence of appellant No.1 Sitaram Dada Lakade under Section 302 of IPC is set-aside. His conviction and sentence under Section 201 of IPC is also set-aside. However, his conviction and sentence under Section 498-A of IPC is maintained. The conviction of appellant No.2 Smt.Tarubai Dada Lakade under Section 498-A of IPC is also maintained. However, looking to her age we are inclined to reduce the sentence of imprisonment to four months. Thus, the sentence of imprisonment is reduced, however, the sentence of fine is increased from Rs.1000/- to Rs.10,000/- (Rs.Ten Thousand Only) in default S.I. for three months. Appellant No.2-Smt.Tarubai Dada Lakade is on bail, she is granted four weeks time to surrender. Appellant No.1-Sitaram Dada Lakade is in jail, he be released forthwith if not required in any other case.

21. Appeal is partly allowed.

[SMT.V.K.TAHILRAMANI,J.] [R.M.S.KHANDEPARKAR,J.]